



February 15, 2008

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## ENGROSSED SENATE BILL No. 31

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DIGEST OF SB 31 (Updated February 13, 2008 12:26 pm - DI 96)

**Citations Affected:** IC 8-23.

**Synopsis:** State highway rights-of-way. Establishes notice and hearing procedures applying to the establishment by the Indiana department of transportation of rights-of-way for additions to the state highway system.

**Effective:** July 1, 2008.

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**Zakas, Landske, Broden, Arnold,  
Riegsecker, Weatherwax**  
(HOUSE SPONSOR — DEMBOWSKI)

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January 8, 2008, read first time and referred to Committee on Homeland Security, Transportation & Veterans Affairs.

January 22, 2008, amended, reported favorably — Do Pass.

January 28, 2008, read second time, ordered engrossed. Engrossed.

January 29, 2008, read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

January 30, 2008, read first time and referred to Committee on Roads and Transportation.  
February 14, 2008, amended, reported — Do Pass.

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ES 31—LS 6394/DI 103+



February 15, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 31

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A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 8-23-5-9 IS ADDED TO THE INDIANA CODE  
2       AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3       1, 2008]: **Sec. 9. (a) The department may establish the approximate**  
4       **locations, using the recommended widths established by the**  
5       **department in the department's approved design manual for**  
6       **equivalent classification of roads, of rights-of-way for additions to**  
7       **the state highway system.**

8       **(b) If the department establishes the approximate locations and**  
9       **widths of rights-of-way for an addition to the state highway system**  
10       **under subsection (a), the department shall conduct a public**  
11       **hearing in at least one (1) county in which a right-of-way for the**  
12       **addition is located. The department shall publish notice of a**  
13       **hearing conducted under this subsection in two (2) newspapers of**  
14       **general circulation in the county in which the hearing will be**  
15       **conducted at least ten (10) days before the hearing. If only one (1)**  
16       **newspaper is published in the county, publication in that**  
17       **newspaper is sufficient. Notice of the hearing shall be given by mail**

ES 31—LS 6394/DI 103+



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to all owners of real property identified within the rights-of-way shown on the map.

(c) If the department establishes the approximate locations and widths of rights-of-way for an addition to the state highway system under subsection (a), the department shall prepare a map showing the approximate location and width of each right-of-way for the proposed addition. The map must display the following:

(1) Existing highways in the area of the addition.

(2) Property lines and owners of record of property to be acquired for the rights-of-way.

(3) Other information determined necessary by the department.

The department shall approve the map, with changes (if applicable), at the public hearing conducted under subsection (b). The department shall record the approval and a copy of the approved map in the office of the recorder of each county in which land to be acquired for the addition is located.

(d) The department shall:

(1) publish notice of a recording under subsection (c) in two (2) newspapers of general circulation in each county in which an approval is recorded; however, if only one (1) newspaper is published in the county, publication in that newspaper is sufficient; and

(2) not more than sixty (60) days after an approval is recorded, send notice of the recording by certified mail to all owners of record of real property to be acquired for rights-of-way for the addition.

(e) The owner of property to be acquired for a right-of-way must give at least sixty (60) days notice by registered mail to the department before developing or otherwise improving the property. However, the owner may perform normal or emergency repairs to existing structures on the property without giving notice to the department.

(f) Not more than forty-five (45) days after receiving a notice under subsection (e), the department shall respond by providing notice to the property owner of the department's intent to acquire the property. The department shall:

(1) purchase; or

(2) exercise the right of eminent domain to acquire;

the property not more than one hundred eighty (180) days after responding under this subsection. If the department does not purchase the property or acquire the property by eminent domain

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1 within one hundred eighty (180) days after responding under this  
 2 subsection, the department may subsequently acquire the property  
 3 through the exercise of the right of eminent domain under  
 4 IC 32-24.

5 (g) An owner of property to be acquired for a right-of-way may  
 6 not receive damages for any development or improvement for  
 7 which the owner is required to give notice to the department under  
 8 subsection (e) unless the department fails to purchase or exercise  
 9 the right of eminent domain to acquire the property under  
 10 subsection (f).

11 (h) The state or a county or municipality in which an addition  
 12 to the state highway system is located may acquire a right-of-way  
 13 needed for the addition at any time. For purposes of this  
 14 subsection, the fair market value of the property shall be  
 15 determined as follows:

16 (1) If the property is purchased, the fair market value on the  
 17 date of purchase.

18 (2) If the property is acquired by eminent domain, the fair  
 19 market value on the date on which the complaint in  
 20 condemnation was filed.

21 However, if the property is agricultural land, the fair market value  
 22 shall be determined under IC 32-24-1.

23 (i) The department shall adopt guidelines to determine whether  
 24 a project constitutes an addition to the state highway system for  
 25 purposes of this section. In adopting guidelines under this  
 26 subsection, the department shall consider the following:

27 (1) The need for additional capacity.

28 (2) The estimated cost of the project.

29 (3) Whether the project is new construction or maintenance.

30 (j) As used in this section, "owner" does not include a utility.

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## SENATE MOTION

Madam President: I move that Senator Riegsecker be added as coauthor of Senate Bill 31.

ZAKAS

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 COMMITTEE REPORT

Madam President: The Senate Committee on Homeland Security, Transportation and Veterans Affairs, to which was referred Senate Bill No. 31, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 4, delete "locations and" and insert "**locations, using the recommended**".

Page 1, line 4, after "widths" insert "**established by the department in the department's approved design manual for equivalent classification of roads,**".

Page 1, line 11, delete "one (1) newspaper" and insert "**two (2) newspapers**".

Page 1, line 13, after "hearing." insert "**If only one (1) newspaper is published in the county, publication in that newspaper is sufficient. Notice of the hearing shall be given by mail to all owners of real property and utilities identified within the rights-of-way shown on the map.**".

Page 2, between lines 4 and 5, begin a new line block indented and insert:

**"(3) The type, location, and owners of utility facilities in the area of the addition."**

Page 2, line 5, delete "(3)" and insert "**(4)**".

Page 2, line 13, delete "one" and insert "**two (2) newspapers**".

Page 2, line 14, delete "(1) newspaper".

Page 2, line 15, after "recorded;" insert "**however, if only one (1) newspaper is published in the county, publication in that newspaper is sufficient;**".

Page 2, delete lines 20 through 23.

Page 2, line 24, delete "(f)" and insert "**(e)**".

Page 2, line 30, delete "(g)" and insert "**(f)**".

Page 2, line 31, delete "(f)," and insert "**(e),**".

Page 2, line 37, after "subsection." insert "**If the department does**

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**not purchase the property or acquire the property by eminent domain within one hundred eighty (180) days after responding under this subsection, the department may subsequently acquire the property through the exercise of the right of eminent domain under IC 32-24."**

Page 2, line 38, delete "(h)" and insert "(g)".

Page 2, line 41, delete "(f)" and insert "(e)".

Page 3, line 1, delete "(g)." and insert "(f)".

Page 3, line 2, delete "(i)" and insert "(h)".

Page 3, after line 13, begin a new paragraph and insert:

**"(i) The department shall adopt guidelines to determine whether a project constitutes an addition to the state highway system for purposes of this section. In adopting guidelines under this subsection, the department shall consider the following:**

**(1) The need for additional capacity.**

**(2) The estimated cost of the project.**

**(3) Whether the project is new construction or maintenance."**

and when so amended that said bill do pass.

(Reference is to SB 31 as introduced.)

WYSS, Chairperson

Committee Vote: Yeas 7, Nays 0.

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#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred Senate Bill 31, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 1, delete "and utilities".

Page 2, line 11, delete "The type, location, and owners of utility facilities in the".

Page 2, delete line 12.

Page 2, line 13, delete "(4)".

Page 2, run in lines 11 through 13.

Page 3, after line 31, begin a new paragraph and insert:

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**"(j) As used in this section, "owner" does not include a utility."**  
and when so amended that said bill do pass.

(Reference is to SB 31 as printed January 23, 2008.)

AUSTIN, Chair

Committee Vote: yeas 9, nays 0.

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